IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

OP.No. 19761 of 2002(C)

PETITIONER:

ELSAMMA JOSEPH, LECTURER IN BOTANY,
GOVERNMENT ARTS AND SCIENCE COLLEGE, CALICUT-18.

BY ADV. SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI

RESPONDENTS:
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1. **STATE OF KERALA,**
   REPRESENTED BY SECRETARY TO GOVERNMENT,
   HIGHER EDUCATION DEPARTMENT, GOVT. SECRETARIAT,
   TRIVANDRUM.

2. **THE DIRECTOR OF COLLEGIATE EDUCATION,**
   COLLEGIATE EDUCATION DIRECTORATE, TRIVANDRUM.

3. **THE PRINCIPAL,**
   GOVERNMENT ARTS AND SCIENCE COLLEGE, CALICUT-18.

4. **THE HEAD OF THE DEPARTMENT OF BOTANY,**
   GOVERNMENT ARTS AND SCIENCE COLLEGE, CALICUT-18.

ADDL.R5 IMPLEADED

5. **BHANUMATHI, W/O.HARIDAS, AGED 60 YEARS,**
   RESIDING NO.6, ANASWARA, VIDYA NAGAR,
   CHEVAYUR, CALICUT 673 017, IS IMPLEADED VIDE ORDER IN I. no.17739/06 dt. 11.1.07.

BY GOVERNMENT PLEADER SRI.V.T.K.MOHANAN
SRI.M.ASOKAN
SRI.DEVAPRASANTH.P.J.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.19761/2002

ORDER ON CMP. NO.33761/2002 IN OP. NO.19761/2002

CLOSED

19.07.2007 SD/- T.R.RAMACHANDRAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE FINAL TEST REPORT OF THE PETITIONER BY DR.SUMEDHA SAHNI, M.D.CLINICAL REFERENCE LABORATORIES, MUMBAI DT. 13.12. 2000.

EXT.P2:- COPY OF THE MEDICAL ADVICE TO START TREATMENT TO THE PETITIONER BY DR.K.VINAYACHANDRAN NAIR, MD., DM, CONSULTANT, GASTROENTEROLOGIST.

EXT.P3:- COPY OF THE CERTIFICATE DT. 17.2.2001 ISSUED TO THE PETITIONER BY DR.R.SHOBHANA DEVI, PROFESSOR & HEAD DEPARTMENT OF GASTROENTEROLOGIST.

EXT.P4:- COPY OF THE JUDGMENT DT. 12.9.01 IN OP. 22541/01 OF THIS HONOURABLE COURT.

EXT.P5:- COPY OF THE ORDER NO. ACC.2/18930/2001/COLL. EDN. DT.14.5.01 ISSUED BY THE 2ND RESPONDENT.

EXT.P6:- COPY OF THE ORDER NO.G.O.(RT) NO.997/01/H.EDN. DT. 12.6.01 ISSUED BY THE GOVERNMENT.

EXT.P7:- COPY OF THE PROCEEDINGS NO.ACCTS.2/11951/2000-01 DT. 17.11.01 OF THE ADDL. DIRECTOR OF COLLEGIATE EDUCATION.

EXT.P8:- COPY OF THE LEAVE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DT. 12.4.02.

EXT.P9:- COPY OF THE APPLICATION FOR CONTINUED TREATMENT SUBMITTED BY THE PETITIONER BEFORE THE DIRECTOR OF HEALTH SERVICES DT. 25.2.02.

EXT.P10:- COPY OF THE MEDICAL CERTIFICATE ISSUED TO THE PETITIONER BY THE DEPARTMENT OF GASTROENTEROLOGIST, MEDICAL COLLEGE CALICUT DT. 23.2.02.

EXT.P11:- COPY OF THE NOTE ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER VIDE NO.367/02 DT. 25.3.02.

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EXT.P12:- COPY OF THE EXPLANATION SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DT.3.4.02.

EXT.13:- COPY OF THE NOTE ISSUED BY THE 3RD RESPONDENT VIDE NO.A7/342/01 DT. 18.4.02 TO THE PETITIONER.

EXT.P14:- COPY OF THE CLAIM FOR REIMBURSEMENT OF MEDICAL EXPENSE OF GOVERNMENT SERVANTS & THEIR FAMILIES SUBMITTED BY THE PETITIONER DT. 23.4.02.

EXT.P15:- COPY OF THE NOTE ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER VIDE NO.A7/342/01 DT. 30.4.02.

EXT.P16:- COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE HONOURABLE MINISTER FOR SC/ST DT. 3.5.02.

EXT.P17:- COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE E2ND RESPONDENT DT. 4.5.02.

EXT.P18:- COPY OF THE PROCEEDINGS OF THE 3RD RESPONDENT VIDE NO.A4/850/GPF/02 DT. 15.5.02.

EXT.P19:- COPY OF THE NOTE ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER DT.19.6.02.

EXT.P20:- COPY OF THE REPLY GIVEN BY THE PETITIONER TO THE 3RD RESPONDENT DT. 20.6.02.

EXT.P21:- COPY OF THE NOTE ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER VIDE NO.B1-435/02 DT.20.6.02.

EXT.P22:- COPY OF THE REPLY SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DT. 22.6.02.

EXT.P23:- COPY OF THE MEMO ISSUED BY THE DY. DIRECTOR-IN-CHARGE OF ADDL.DIRECTOR OF COLLEGIATE EDN. VIDE NO.J2/11951/2000-01 DT. 30.5.02 TO THE PETITIONER.

EXT.P24:- COPY OF THE NOTE ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER VIDE NO.A7/342/01/DT.4.7.02.

EXT.P25:- COPY OF THE ORDER NO.13676/F2/04/H.EDN DT. 26.5.04 ISSUED BY THE 1ST RESPONDENT.

EXT.P26:- COPY OF THE NEWS REPORT PUBLISHED IN DESABHIMANI DAILY DT. 14.9.04.

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RESPONDENTS EXHIBITS

EXT.R3(a):- COPY OF THE VIGILANCE ENQUIRY REPORT DT. 5.1.04.

EXT.R4(a):- COPY OF THE G.O.(P) 45/97 H & FWD DT. 18.2.1997.

EXT.R4(b):- COPY OF THE G.O.(P) 285/H & FWD DT. 2.11.2000.

EXT.R4(c):- COPY OF THE COMPLAINANT FROM THE PARENT TEACHERS ASSOCIATION DT. 30.4.02.

EXT.R5(a):- COPY OF THE REQUEST DT. 18.7.01.

EXT.R5(b):- COPY OF THE REMINDER DT. 19.6.02.

EXT.R5(c):- COPY OF THE ORDER DT. 17.11.01.

EXT.R5(d):- COPY OF THE REPRESENTATION SUBMITTED BY THE STUDENTS DT. 19.3.02.

EXT.R5(e):- COPY OF THE REPRESENTATION SUBMITTED BY THE PARENT TEACHERS ASSOCIATION DT. 30.4.02.

EXT.R5(f):- COPY OF THE JUDGMENT DT. 25.7.02 IN OP. NO.20810/02 (B) BY THE HONOURABLE HIGH COURT OF KERALA.

/TRUE COPY/

P.A. TO JUDGE

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T.R.RAMACHANDRAN NAIR, J.

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O.P.No. 19761 of 2002 (C)

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Dated this the 19th day of July, 2007

J U D G M E N T

The petitioner at the time of filing the original petition was working as Lecturer in Botany at Government Arts and Science College, Calicut. While working there in the year 2000, she was sanctioned permission to join M.Phil course in Botany at Calicut University on deputation. During this period, it was detected that she was suffering from Hepatitis-C. This is evident from Ext.P1 final test report. On medical advice, she started treatment and was referred to the medical college hospital. Therein required treatment commenced on 05/01/2001. It appears that during this period, the period of deputation of the petitioner was to end on 01/08/2001 and instead of allowing her to join in the Government Arts and Science College, Calicut, she was transferred to Government Sanskrit College, Pattambi. This was challenged in O.P.No.22541/2001, which was disposed of by Ext.P4 judgment.

2. Since the treatment was highly expensive and as she was in dire necessity for funds to meet the medical expenses, the petitioner on 28/02/2001 applied for a loan of rupees two lakhs, which was recommended by the second respondent. Simultaneously, she had also applied for medical reimbursement towards the treatment she had already undergone from 05/01/2001. The claim for reimbursement of Rs.39,366/- was sanctioned as per Ext.P5 and an interest free loan of rupees two lakhs was sanctioned as per Ext.P6. Subsequently another amount of Rs.39,927/- was sanctioned towards the medical reimbursement, which is evidenced by Ext.P7. Ext.P7 will show that this amount was adjusted towards the sanctioned loan of rupees two lakhs. It is admitted by both sides that the amount sanctioned as per Ext.P5 has not been disbursed so far.

3. The treatment had been continuing but the petitioner had to suffer certain other troubles in the meanwhile and according to the petitioner because of certain actions of the authorities concerned, she was put to difficulties also. She had been seeking leave for continued medical treatment and a further loan

of rupees four lakhs also during the relevant period, as evidenced by Ext.P9 application. It is also her case that because of grave financial difficulties, she had applied for advance from the Provident Fund on 15/04/2002. It was at this juncture that the third respondent issued a note dated 18/04/2002 asking the petitioner to repay the balance in the interest free loan amounting to Rs.1,60,073/-. The case of the petitioner is that the same was issued without considering Exts.P9 and P10.

4. The petitioner in the meanwhile submitted a claim for medical reimbursement for Rs.2,19,270.73, through proper channel, which is evidenced by Ext.P14.

5. Ext.P23 is the communication issued by the Additional Director of Collegiate Education, directing the petitioner to remit the balance amount of interest free loan with 12% interest. This original petition is filed challenging the same and seeking for various other reliefs and by interim order dated 17/07/2002, an interim stay of recovery has been ordered by this Court.

6. Meanwhile, allegations arose against the veracity of the claims made by the petitioner in Ext.P14. This was subjected to an enquiry through Vigilance Department. Along with the additional counter affidavit filed on behalf of the second respondent, the vigilance enquiry report has been produced. The vigilance enquiry was conducted in respect of three allegations against her including the allegation that she does not belong to the Scheduled Tribe community. Ultimately, it has been reported that there was bogus medical bills worth Rs.62,706/-. In the additional counter affidavit, it is admitted that the amount covered by Ext.P5 has not been disbursed to her. The additional fifth respondent, who was the Principal of the Government Arts and Science College, Calicut, has also got impleaded in the original petition and has filed a counter affidavit.

7. Heard learned counsel on both sides. The only issue that survives is the claim of the petitioner for sanction of the amounts covered by Ext.P14 and also for disbursal of the amount covered by Ext.P5. Now that in the vigilance enquiry irregularities have

been traced regarding certain bills to the tune of Rs.62,706/-, the learned counsel for the petitioner submitted that the authorities may be directed to examine the same but as regards the unobjected portion of amount direction may be issued to adjust the same in the amount sanctioned as per Ext.P6 and the balance can be disbursed. The total amount covered by Exts.P5 and P14 will be Rs.2,58,636.73. The balance amount after deducting the objected portion will be Rs.1,95,930.73. The interest free loan remaining to be repaid is to the tune of Rs.1,60,073/-. Therefore, after adjusting the balance of interest free loan amount, an amount of Rs.35,857.73 alone is to be disbursed to her, argued the counsel for petitioner. There will be a direction to the second respondent to consider the sanction of the amount claimed in Ext.P14 after considering the vigilance report and pass consequential orders as regards the claim for medical reimbursement and also for adjustment of the amounts payable towards the loan from the unobjected portion of Ext.P14. Regarding the objected portion, to the tune of Rs.62,706/-, the second respondent will be free to take appropriate decision after hearing the petitioners also. Consequential orders shall be

passed within four months from the date of receipt of a copy of this judgment. Appropriate orders shall also be passed to release the eligible balance amount to the petitioners within the above period.

The original petition is disposed of as above. No costs.

T.R.RAMACHANDRAN NAIR,
Judge

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T.R.RAMACHANDRAN NAIR, J.

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O.P.No. 19761 of 2002 (C)

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J U D G M E N T

19th July, 2007